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IN THE

# Supreme Court of the United States

October Term, 1969

1832 Misc. .....

WILLIAM STANBRIDGE,

*Petitioner,*

—v—

STATE OF NEW YORK,

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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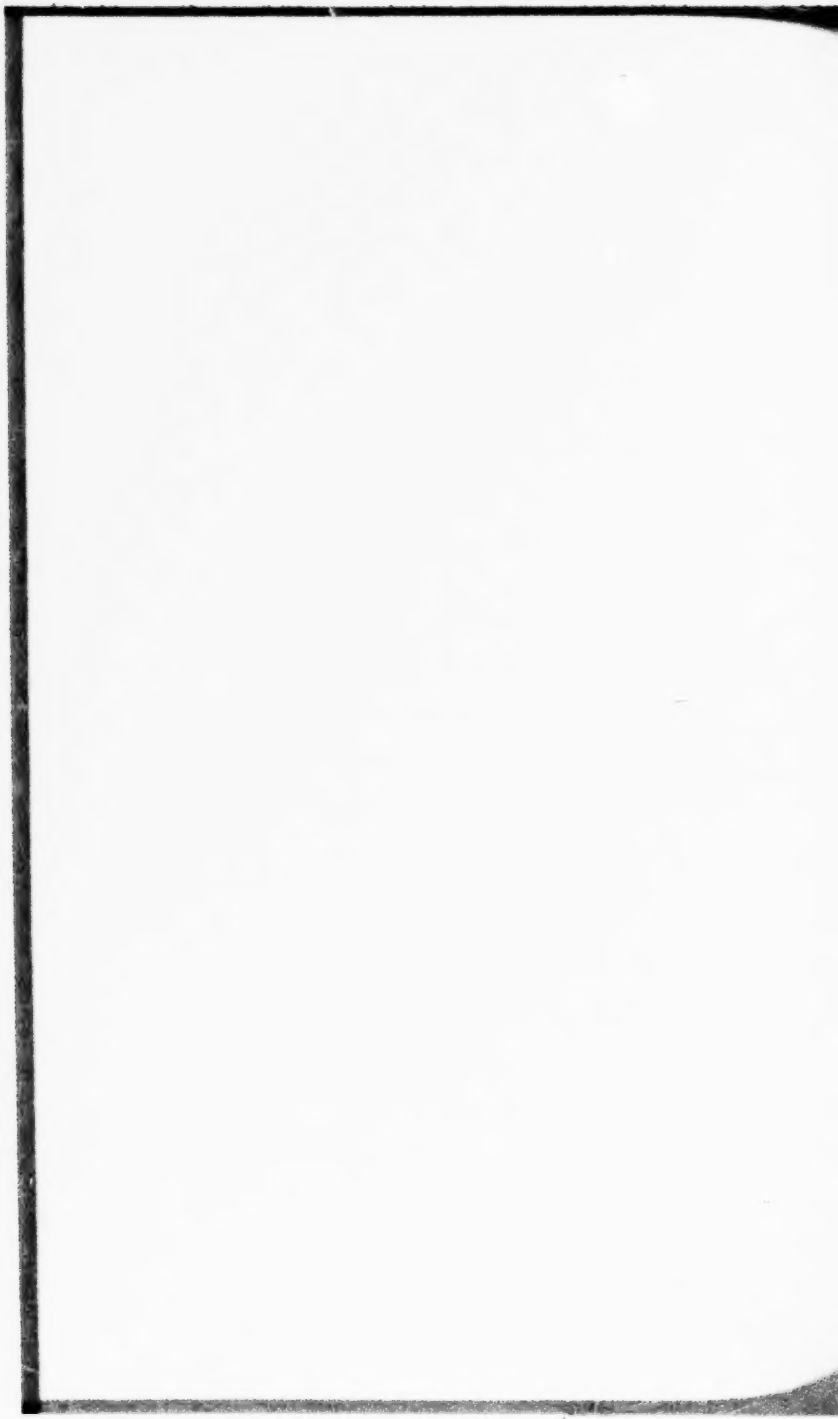

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IN THE

# Supreme Court of the United States

**October Term, 1969**

**No. ..... Misc. .....**

WILLIAM STANBRIDGE,

*Petitioner,*

—v—

STATE OF NEW YORK.

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

*To the Honorable, the Chief Justice and the Associate Justice of the Supreme Court of the United States:*

William Stanbridge, petitioner herein, respectfully prays that a writ of certiorari be issue to review the judgment of the New York Court of Appeals which re-affirmed a judgment of the Supreme Court, Nassau County, convicting the petitioner of the crimes of Manslaughter in the First Degree and Robbery in the First Degree.

### Opinions Below

The opinion affirming petitioner's conviction is officially reported (*People* v. *Stanbridge*, 21 N.Y.2d 706). The opinion of the Court below reaffirming the conviction after petitioner's application for a writ of certiorari had been granted by this Court (*Stanbridge* v. *New York*, 395 U.S. 709) and remanded to the Court below for further consideration in light of *Bruton* v. *United States*, 391 U.S. 123 is as yet unreported but is set forth in Petitioner's Appendix A.

## Jurisdiction

The judgment of the New York Court of Appeals affirming petitioner's judgment of conviction was ente on January 8, 1970. The jurisdiction of the Court invoked pursuant to Title 28 U.S.C., Section 1257(

## Constitutional Provisions Involved

The constitutional provisions involved in this case the Fifth, Sixth and Fourteenth Amendments to the Uni States Constitution.

## Questions Presented

1. Whether, under the peculiar circumstances of instant case the reaffirmance of petitioner's convictions the Court below amounts to a disregard by that Tribu of this Court's decision which had to all intents a purposes held that petitioner Stanbridge's case came with the purview of *Bruton* v. *United States*, 391 U.S. 1 and therefore entitled him to a new trial?

2. Whether, this Court should render a conclusive d termination as to the constitutional propriety of Sta bridge's confession at this time in light of the opini below which in part has for its premise that this Cou has ostensibly passed upon the validity of petitioner's co fessions and found them to have been voluntarily obtain since such determination is fundamentally inconsistent wit the overwhelming weight of authority of this Court wit respect to the constitutional admissibility of an accused' incriminating statements?

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## Statement

The petitioner, William Stanbridge was jointly tried in the New York Supreme Court, Nassau County with Robert Moll and John Closter for the crimes of Murder in the First Degree and Robbery in the First Degree.

Petitioner was convicted of the crimes of Manslaughter in the First Degree and Robbery in the First Degree. Petitioner was sentenced to a term of imprisonment of from 35 to 70 years. The judgments had been affirmed by virtue of a 5 to 2 majority by the Court below (21 N.Y.2d 706) (Petitioner's Appendix B).

During the October, 1967 Term of this Court, petitioner filed for a writ of certiorari. This application was subsequently re-numbered No. 208 Misc. October Term, 1968.

By letter dated October 15, 1968, the respondent was requested by this Court for a further response in the light of *Bruton* v. *United States,* 391 U.S. 123.

The resppndent filed his response as requested and petitioner an Answer thereto.

The respondent contended then as he did in the Court below that inasmuch as there were purportedly cross-implicating confessions made by the respective defendants in this case, the *Bruton* rule was inapplicable. In a word, petitioner contended then and now, that since neither of his co-defendants had testified at trial *before the jury* thereby foreclosing him from any cross-examination whatsoever coupled with the inescapable fact that the evidence to convict petitioner consists of his constitutionally tainted confessions which demonstrates that the State's evidence against Stanbridge is indeed slim in the extreme he is entitled to the benefit of the *Bruton* rule. Moreover, while the co-defendants made confessions in which they incrim-

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inated Stanbridge, Stanbridge's statements (State's Exhibits 23 and 27 in Evidence) were basically exculpatory and therefore, in drastic variance with the statements of his co-defendants. *Cf. United States ex rel. Johnson* v. *Yeager*, 399 F.2d 508-510-11 (3rd Cir. 1968) *cert. denied*, 89 S. Ct. 620

Shortly after the decision of this Court in *Harrington* v. *California*, 395 U.S. 250, petitioner transmitted a telegram to this Court contending that the harmless error criterion as outlined in that case would not conclude Stanbridge from the benefit of the *Bruton* rule in view of the paucity of evidence adduced against Stanbridge coupled with the fact that there was a sharp variance between Stanbridge's exculpatory statements and Moll's incriminatory statements. (Petitioner's Exhibit C—his brief in the Court below reproduced here and styled Appendix C *infra*).

After carefully considering this case for more than two years, the respective briefs of counsel specifically addressed to the *Bruton* issue, petitioner's lengthy telegram following the *Harrington* decision, this Court unanimously granted the petition, *vacated the judgment* of the Court below and remanded petitioner to that Court for further consideration in light of *Bruton* v. *United States*, *supra*. (*Stanbridge* v. *New York*, 395 U.S. 709).

In light of the foregoing impressive chronology it seemed apparent to petitioner that this Courts' determination *vacating the judgment* below predicated upon the *Bruton* rule * simply meant he came within the purview of the rule and was entitled to a new trial.

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* Although petitioner Moll had petitioned this Court at the same time as Stanbridge the Court did not grant Moll's petition where the evidence to convict was much more convincing than against Stanbridge.

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Accordingly, petitioner moved in the Court below for an order granting a new trial. This, notwithstanding the awareness of the existing New York Court of Appeals decision in *People* v. *McNeil*, 24 N.Y.2d 550 (1969) which is a 4 to 3 holding to the effect that a *Bruton* violation could be construed harmless error per se in the case of cross-implicating confessions. Parenthetically, we reiterate that this is not a bona fide cross-implicating confession situation. *Cf. United States ex rel Johnson* v. *Yeager*, *supra*. Instead, the Court below accepted the suggested approach expressed by the respondent and set the case down for reargument.

The decision reaffirming the conviction based upon *People* v. *McNeil, supra*, then followed. This Court remanded petitioner's case to the Court below despite *McNeil*, which had been decided two months previous to the grant of certiorari. Obviously, finding nothing in *McNeil* to withhold the benefit of *Bruton* from petitioner.

## I

The Court below is seemingly incapable of seeing beyond its decision in *People* v. *McNeil*, 24 N.Y.2d 550, which holds without qualification that where there are cross-implicating confessions per se, a *Bruton* violation can dissipate as harmless error. See, *New York Code Crim. Pro. Sec. 542.* This is conclusively demonstrated by the concurring memorandum of Chief Judge Fuld and Associate Judge Burke in the Court below:

> "Although we still subscribe to the view set forth in the dissenting opinion in People v. McNeil (24 N.Y.2d 550)—*which would require a reversal here*—we are constrained by the majority's decision in that case to vote for affirmance. (See, also, concurring opinion in People v. Galloway, 24 N.Y.2d 935, 936)." (Petitioner's Appendix A *infra*).

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We had unsuccessfully urged to have the Court below apply the more realistic criteria enunciated by this Court in *Harrington* v. *California*, 395 U.S. 250 (1969) (See, Appellant's Brief in the Court below, Point I, at pp. 25).

During the oral argument below the members of the Court almost uniformly took issue with the respondent's manifestly absurd argument that years after conviction Stanbridge was afforded an opportunity to cross-examine Moll and Closter at a *"Huntley"** styled hearing where the sole issue was one of voluntariness and therefore, the *Bruton* violation at trial could be overlooked.

As one learned member of the majority below so cogently pointed out during oral argument—had Moll and Closter somehow managed to blurt out testimony, *clearly inadmissible* at this post-trial hearing, that their statements incriminating Stanbridge were untrue in what manner would this benefit Stanbridge with a jury which has long since rendered their verdict convicting the petitioner?

Even Judge Bergan writing for the majority below seems to recognize, as indeed he must, this vast distinction but he nevertheless and seemingly rather inconsistently relies upon this *post*-trial proceeding as a major factor to withhold from Stanbridge the benefit of a rule to which he is clearly entitled.*

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* *People* v. *Huntley*, 15 N.Y. 2d 72, sets forth the procedure to be followed in New York to determine the voluntariness of confessions. Cf. *Jackson* v. *Denno*, 378 U.S. 368. Although Judge Bergan alludes to this procedure he eschewed comment upon the irrefutable fact that the confessions of Moll and Closter were received *unredacted* of prejudicial references to Stanbridge (Petitioner's brief in the Court below Point IV; Appendix C).

* We are annexing herewith petitioner's brief in its entirety in the Court below relative to this Court's remand styled "Appendix-C" *infra*.

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It is quite remarkable how the quantum and character of the evidence against Stanbridge has improved in the view of the respondent and seemingly Judge Bergan since this Court's unexpected promulgation in *Bruton*. In arguing before the very same Court below in *People* v. *McQueen*, 18 N.Y.2d 337, in favor of a prospective application of *Escobedo* v. *Illinois*, 378 U.S. 478, respondent alluding to petitioner's case correctly stated that the *only* real evidence against Stanbridge is his confession. Therefore, if *Escobedo* was applied to cases then on appeal such as petitioner's this would invalidate his confession and he probably could not be successfully retried. Since *Bruton* the evidence has somehow elevated to a "devastating" mountain of circumstantial evidence.*

## II

A major factor relied upon by Judge Bergan below is the fact that this Court did not reopen the issue of Stanbridge's confession. He, therefore, unilaterally concludes from this that as a matter of law it must be held to be a free and voluntary confession properly received as evidence against Stanbridge. This finding, of course, is contrary to the venerable teaching of this Court to the effect that this Court will only decide questions sufficient to a determination of a cause of action and meticulously avoids the passing upon of Constitutional questions unnecessarily. Having found a clear *Bruton* violation it was understandably unnecessary to pass upon the validity of Stanbridge's confession. However, in view of Judge Bergan's opinion joined by the majority of the Court below as to the admissibility

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* The majority opinion below relies for the result reached upon that Court's *McNeil* decision which is inconsistent with this Court's *Harrington* criterion. A post-trial proceeding which patently cannot cure the prejudice of a *Bruton* violation; and finally, a confession already held unconstitutionally obtained by two members of the Court below and which under a long line of cases emanating from this Court is clearly constitutionally tainted.

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of Stanbridge's confession it would seem to be the logical approach and fair to both sides to have a determination as to the admissibility of petitioner's statements at this time. A ruling at this time may well save the petitioner and the State the extraordinary expense of a protracted re-trial which would practically have for its entire evidentiary content Stanbridge's statements having already been held constitutionally defective by Chief Judge Fuld and Associate Judge Burke (21 N.Y.2d 706). (See, also, Petitioner's Petition for Certiorari, No. 208 Misc., Oct. Term. 1968, pp. 6 through 30 inclusive, concerning the propriety of Stanbridge's statements.)

## CONCLUSION

**The Petition for a Writ of Certiorari should be granted.**

Respectfully submitted,

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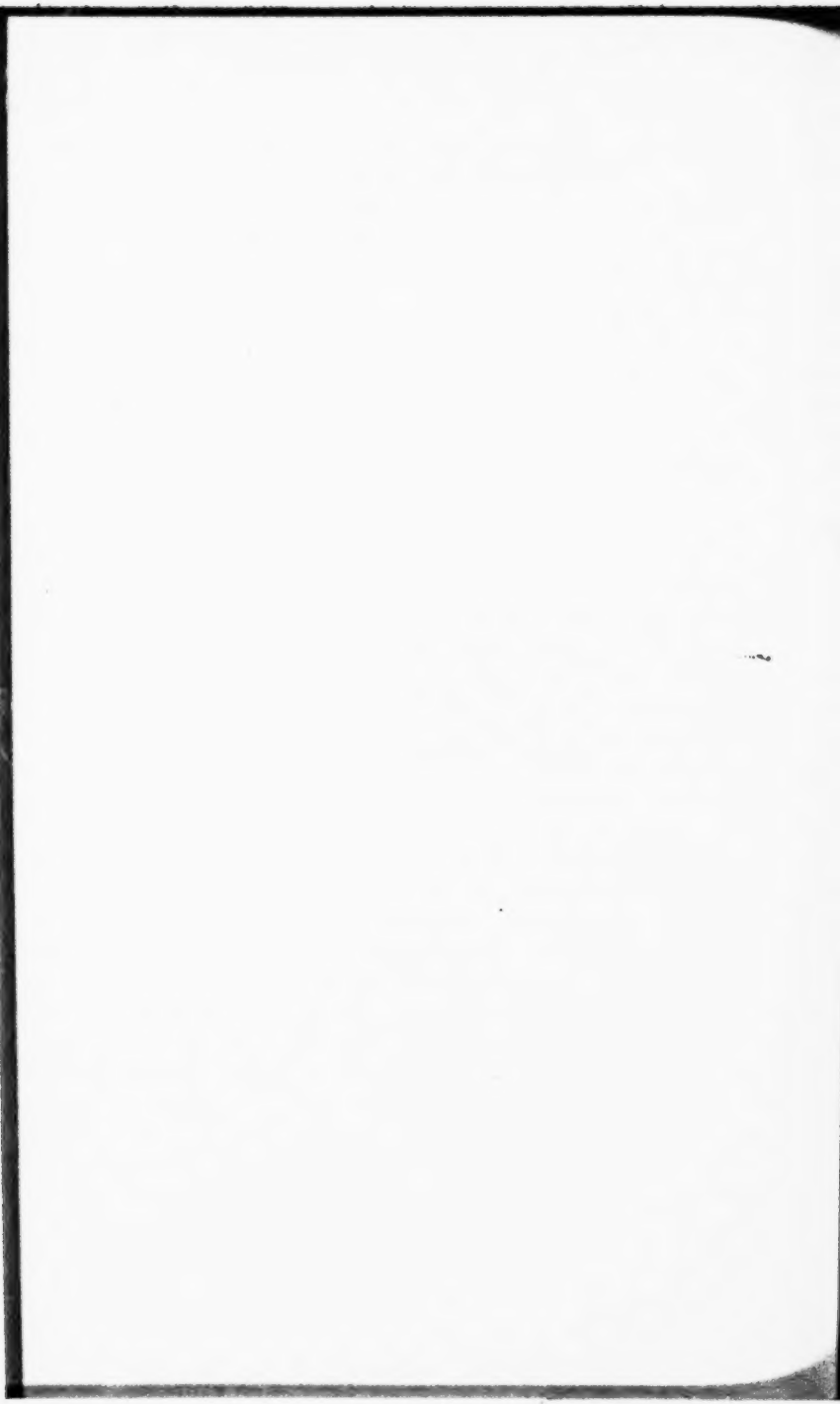
# APPENDIX



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## APPENDIX A

**Opinion of Court of Appeals of the State of New York**

STATE OF NEW YORK

COURT OF APPEALS

No. 97. 67

THE PEOPLE &c.,
*Respondent-Appellant,*

vs.

ROBERT MOLL,
*Appellant,*

*and*

WILLIAM STANBRIDGE and JOHN CLOSTER,
*Appellants-Respondents.*

BERGAN, *J.*:

In the murder of a policeman following close upon the robbery of a store, William Stanbridge, a participant in both crimes, has been convicted of manslaughter in the first degree, a substantially lesser charge than the murder first degree on which he was tried. He was also convicted of robbery, larceny and assault charges arising from the store robbery.

Stanbridge confessed his participation in the crimes. He had two accomplices, Robert Moll and John Closter, who also confessed. There was a joint trial in which the confessions of each defendant were received, each only against the one confessing, with adequate limiting instructions to the jury as to the others. This court in 1967 affirmed all three convictions with a dissenting opinion by Judge Burke in which Chief Judge Fuld joined (*People v. Moll*, 21 N.Y.2d 706).

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## *Appendix A*

On June 19, 1969 the Supreme Court of the United States on petition of Stanbridge vacated the judgment of conviction as to him and remanded the case to this court "for further consideration in light of *Bruton* v. *United States*, 391 U.S. 123" (*Stanbridge* v. *New York*, 395 U.S. 709).

The decision in *Bruton* turned entirely on the absence of confrontation of witnesses required by the Constitution in a criminal trial. This absence was noted when a co-defendant's confession implicated the complainant and was received in evidence at a joint trial.

In such a situation, the human nature of juries being what it is, the Supreme Court felt the protection of judicial instruction to the jury not to consider that A's confession said about B was an inadequate safeguard.

So the rule of *Delli Paoli* v. *United States* (352 U.S. 232), resting on the supposed protection of careful judicial instruction, was overruled. The essence of *Bruton* as laid down by Justice Brennan is this: "Here the introduction of Evans' confession posed a substantial threat to petitioner's right to confront the witnesses against him, and this is a hazard we cannot ignore. Despite the concededly clear instructions to the jury to disregard Evans' inadmissible hearsay evidence inculpating petitioner, in the context of a joint trial we cannot accept limiting instructions as an adequate substitute for petitioner's constitutional right to cross-examination" (391 U.S., p. 137).

Further consideration of the present case with the *Bruton* doctrine in mind requires this court to see both the extent to which there was an absence of confrontation against Stanbridge when the whole record is looked at: and if the rule of *Bruton* had been violated, whether the other evidence in the case was so strong as to subordinate the effect on Stanbridge of confessions of co-defendants to a minor role so as to say the error was harmless within *Harrington* v. *California* (395 U.S. 250 [1969]).

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*Appendix A*

Justice Brennan, dissenting in *Harrington,* felt that "the deterrent effect of" *Bruton* and some other cases "will be significantly undermined" by *Harrington* (395 U.S., p. 255). A State court must, however, take the two cases the way they have been laid down and follow them both in good faith and as far as possible.

On confrontation with the confessing co-defendants, there was full adversary opportunity for Stanbridge's lawyer to examine these defendants as to the statements made by them involving Stanbridge. All three defendants testified at the *Huntley* hearing; none testified at the trial. Counsel for Stanbridge cross-examined Closter, one of the co-defendants; he had opportunity to cross-examine Moll but did not do it.

The complete absence of confrontation found in *Bruton,* therefore, did not exist here; and although there is a difference between the cross-examination afforded at a trial, absent here because defendants did not testify, and that afforded at the *Huntley* hearing where they did testify, the availability of a means to test truth seems significantly to distinguish this case from *Bruton* where there was no such availability of cross-examination or confrontation.

This court, considering the effect of *Bruton,* has noted the difference in effect where co-defendants testify at the trial and are subject to crossexamination (*People* v. *Anthony,* 24 N.Y.2d 696). It has applied the same rule where opportunity to cross-examine was afforded at a *Huntley* hearing (*People* v. *Galloway,* 24 N.Y.2d 935).

On somewhat different grounds, the court also has not applied the *Bruton* rule where there are multiple confessions of co-defendants and the complaining defendant has himself confessed, apparently because this is a safety check on the reliability of the confession or, in any event, minimizes the prejudicial effect of receiving implicating confessions of other defendants. "[I]n a case such as this, the logic of *Bruton* is inapplicable" (*People* v. *McNeil,* 24

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N.Y.2d 550, 552 [Scileppi, *J.*]). This was in part based on the rationale in *United States ex rel. Catanzaro* v. *Mancusi*, 404 F.2d 296).

This reasoning suggests somewhat the broader view of *Harrington* which affords ground on which the record in this case should be distinguished from *Bruton*. If Stanbridge's confession be taken into account the evidence against him is, indeed, as overwhelming as that considered in *Harrington*.

The issue on the validity of that confession is now closed and as a matter of law it must be held a free and voluntary confession properly received against Stanbridge. This, as to Stanbridge, was the main problem debated in this court, as the dissenting opinion demonstrates (21 N.Y.2d 706, 709-711).

The Supreme Court did not reopen this issue in remitting to consider the effect of *Bruton* which is quite a different question, and so the confession of Stanbridge added to the circumstantial case against him gives strong enough support to the judgment to come within *Harrington*. Indeed the identity of an unusual car owned by Stanbridge observed at the scene of the crime by a youthful and alert witness led to the apprehension of all defendants.

Upon reconsideration the judgment should be affirmed.

* * * * *

Upon reargument by defendant Stanbridge: Original decision of this Court, dated December 29, 1967, affirming the judgment, adhered to. Opinion by Bergan, *J.* All concur, Fuld, *Ch. J.* and Burke, *J.*, in the following memorandum: Although we still subscribe to the view set forth in the dissenting opinion in *People* v. *McNeil* (24 N.Y.2d 550)—which would require a reversal here—we are constrained by the majority's decision in that case to vote for affirmance. (See, also, concurring opinion in *People* v. *Galloway*, 24 N.Y.2d 935, 936).

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## APPENDIX B

### Dissenting Opinion by Burke, J.

2 No. 97 67

THE PEOPLE &c.,
*Respondent-Appellant,*

vs.

ROBERT MOLL,
*Appellant,*

*and*

WILLIAM STANBRIDGE and JOHN CLOSTER,
*Appellants-Respondents.*

BURKE, *J.*: (Dissenting):

We are unable to agree to affirmance of these defendants' convictions. This is the sort of case where feelings run high—any case involving the vicious killing of a police officer is bound to produce such feelings. But it is just this sort of case that demands scrupulous care on the part of the authorities to prevent the sort of claims that are now made here by these defendants. In the instant case, unfortunately, no such care was taken. Here, rather, the record reveals a lack of concern on the part of a number of those charged with responsibility for the administration of criminal justice who had any contact with this case with preventing possible reversible error. As a result, we have before us three convictions for most serious crimes that, under all circumstances here presented, hint strongly of unfairness. This, where it seems clear conviction of these defendants would likely have been obtained even if the utmost moderation had governed the conduct of the authorities.

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*Appendix B*

To begin with, three assistant district attorneys sat throughout the night at the Sixth Precinct Station house of the Nassau County Police in Roslyn while teams of police officers incessantly questioned the defendant Stanbridge, an eighteen year old youth, in an effort to obtain a confession. It was clear at the time that Stanbridge could likely be connected with the killing, yet apparently none of the assistant district attorneys made any effort to sit in on the interrogation of this defendant until the police were satisfied that they had obtained all that they could from him. This was not until 8 A.M., when one of the assistant district attorneys took over and began questioning the suspect further. (Stanbridge had been picked up about midnight.) Defendant Closter was picked up at 3 A.M. and the same procedure was followed with him. Presumably, Moll also received this treatment, but he does not urge on this appeal that his confession was a product of coercion (only that it was taken after his request for counsel had been denied).

On Arraignment the following day (16 hours after Stanbridge's arrest) the magistrate was advised of the suspects' complaints concerning police brutality, yet he refused their request for a court ordered medical examination, commenting simply that this would be taken care of by the jail authorities. He also refused their request that they at least be allowed to exhibit in court their claimed injuries. The same request were made some thirty minutes later to another judge, with the added allegation that the jail doctor on examining defendants purposely ignored their injuries, and he also refused the requests. Subsequently the police officers involved and the jail officials all swore that no one had laid a hand on the suspects and no injuries were observed, but independent verification of the testimony of these witnesses, whose sympathy toward and identification with the cause of the prosecution in a case such as this must be obvious, was made forever im-

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possible. (The arraigning magistrate and his court stenographer later testified that they noticed no injuries on the parts of the suspects' bodies that were visible to them, but it is ingenuous to suppose that the police officers, if in fact they did beat these defendants, would have beaten them in such a way that the marks of such abuse would be obvious on arraignment. At the Huntley hearing counsel representing the defendants testified as to observing signs of injuries.)

The trial court's later reading of *People* v. *Huntley* (15 N.Y. 2d 72) as *mandating* that he sit on the *Huntley* was uncalled for. As we pointed out in *People* v. *Horton* (17 N.Y. 2d 355, at 362), the trial court has discretion as to whether or not to disqualify himself. This, we believe, is the only fair reading that can be given *Huntley*, and, here discretion would seem to have called for disqualification.

Finally, we do not believe the court on the *Huntley* hearing was free to reject defendant Moll's uncontradicted testimony as to the denial of counsel before his confession was obtained. The People had available numerous witnesses who would have been able to rebut this testimony, if in fact Moll's claim was false. The failure of Moll to testify on his trial and raise this point cannot reasonably be held to impeach his later claim. If he had done so he would have been open to unrestricted cross-examination as to his part in the crime.

On these grounds we would reverse and order new trials for all defendants.

* * * * *

Judgments affirmed. No opinion. All concur except Burke, J., who dissents and votes to reverse and order new trials in an opinion in which Fuld, Ch. J., concurs.

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## Order of Court of Appeals of the State of New York

STATE OF NEW YORK,

In Court of Appeals

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Fourteenth day of February A.D. 1968.

Present, HON. STANLEY H. FULD,
*Chief Judge, Presiding.*

2. Mo. No. 105

THE PEOPLE &c.,

*Respondent.*

vs.

ROBERT MOLL, WILLIAM STANBRIDGE and JOHN CLOSTER,

*Appellants.*

A motion for reargument and to amend the remittitur in the above cause having heretofore been made upon the part of the appellant Stanbridge herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, insofar as reargument is sought, that the said motion be and the same hereby is denied, and it is

ORDERED, insofar as amendment of the remittitur is sought, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when

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*Order of Court of Appeals of the State of New York*

returned, it will be amended by adding thereto the following:

> Upon the appeal herein of appellant William Stanbridge there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: Whether appellant's right to due process of law under the Fourteenth Amendment has been adversely affected and whether appellant's conviction was based in part on unlawful search and seizure in violation of his rights under the Fourth and Fourteenth Amendments. The Court of Appeals held that there was no violation of appellant's constitutional rights under either of these amendments.

AND the County Court of Nassau County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

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s/ GEARON KIMBALL
Deputy Clerk

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## APPENDIX C

## COURT OF APPEALS
## OF THE STATE OF N5W YORK

THE PEOPLE OF THE STATE OF NEW YORK
*Respondent,*

*—against—*

WILLIAM STANBRIDGE,
*Defendant-Appellant.*

## DEFENDANT-APPELLANT'S BRIEF UPON REMAND TO THIS COURT FROM THE SUPREME COURT OF THE UNITED STATES

### Statement

The defendant-appellant, William Stanbridge, was jointly indicted and tried in the Supreme Court, Nassau County, before Judge and jury, together with Robert Moll and John Closter for Murder and Robbtry in the First Degree in connection with a robbery at a supermarket on March 23, 1961.

Appellant was convicted of Manslaughter and Robbery in the First Degree. The judgments were affirmed by this Court by virtue of a 5 to 2 majority (21 N. Y. 2d 706).

On June 16, 1969, the Supreme Court granted appellant's petition for a writ of certiorari and the judgment of this Court was vacated and the case was remanded for further consideration in light of *Bruton* v. *United States*, 391 U.S. 123 (Appendix A).

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Appellant thereafter motioned this Court to conform its remittitur to the mandate of the Supreme Court to the extent of either remanding appellant to the Supreme Court, Nassau County, for a new trial or in the alternative, dismissal of the indictment.

The Court thereafter set this case down for reargument.

## POINT I

**The Decision of the United States Supreme Court on June 16, 1969, granting appellant's Petition for a Writ of Certiorari after that Court had directed specific argument as to the applicability of *Bruton* v. *United States*, 391 U.S. 123, the vacatur of the judgment of this Court and the remand of appellant's case to this Court for further consideration in the light of *Bruton* v. *United States*, *supra*, notwithstanding the earlier decision of that Court in *Harrington* v. *California*, 395 U.S. 250 (1969), decided two weeks prior to the grant of appellant's petition for a Writ of Certiorari and nearly two full months after the decision of this Court in *People* v. *McNeil*, 24 N.Y.2d 550 (decided April 23, 1969), a decision which the Supreme Court undoubtedly considered in deciding appellant's petition amounts to a definitive adjudication from the highest Court in our land that appellant is indeed entitled to a new trial in light of *Bruton* v. *United States*, *supra*.**

Appellant's convictions of Manslaughter and Robbery in the First Degree were affirmed by this Court by virtue of a 5 to 2 majority (21 N.Y. 2d 706). He then petitioned the United States Supreme Court for a writ of certiorari during the October Term, 1967. The petition was pending for approximately one year when on October 15, 1968, the respondent was directed by that Court for a "further response in the light of *Bruton* v. *United States*, 391 U. S. 123" which had then been recently decided by that Court.

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*Appendix C*

The appellant filed an Answer to the respondent's Argument which must be well known to this Court at this point, *viz.*, that appellant could not hope to benefit from the *Bruton* rule inasmuch as there were cross-implicating confessions in this case and, therefore, Stanbridge had not been sufficiently prejudiced by co-defendant Moll's incriminating confession as to warrant the invocation of the *Bruton* rule. Cf. *United States ex rel. Catanzaro* v. *Mancusi*, 404 F.2d 296 (a case relied upon by the majority in *People* v. *McNeil, supra*).*

We submit that the respondent's argument was carefully considered and rejected by the Supreme Court since appellant's conviction is hanging by the bare thread of a confession already held invalid by Chief Judge Fuld and Associate Judge Burke (21 N.Y. 2d 706).** A confession which we submit patently cannot withstand the scutiny of a federal habeas corpus proceeding. Cf. *People* v. *Cerrulo*, 18 N.Y. 2d 839, where a federal writ of habeas corpus was granted after a hearing ordered by the United States Court of Appeals for the Second Circuit. *United States ex rel. Cerullo* v. *Follette*, 393 F.2d 879 (1968). Such being the case and applying the criteria outlined by the Supreme Court in *Harrington* v. *California, supra*, as opposed to the

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* Appellant reproduces his brief as to the applicability of *Bruton* rule in the Supreme Court as "Appendix B" for the purpose of demonstrating that the Supreme Court has indeed ruled precisely as to the applicability of the *Bruton* rule.

** Appellant also contends *infra* under Point II of this brief that inasmuch as there was a drastic variance between his statements and that of his co-defendant Moll his case is more analogous to that of *United States ex rel. ohnson* v. *Yeager*, 399 F.2d 508-510-11 (3rd Cir. 1968), *cert. denied*, 89 S. Ct. 620, than to the *Catanzaro* v. *Mancusi* case, *supra*. A case, unlike appellant's, where the evidence was overwhelming.

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blanket holding of *People* v. *McNeil, supra,* this would preclude the invocation of the harmless error doctrine in this case of *Chapman* v. *California* (386 U.S. 18).

The decision of *Harrington* v. *California, supra,* outlining the ertremely rare instances where the harmless error doctrine would apply in case of cross-implicating confessions is obviously a much tricter rule than the seeming blanket holding a majority of this Court in *People* v. *McNeil, supra,* to the effect that *per se* where there are cross-implicating confessions the harmless error rule could be invoked to save a conviction from reversal.

To this extent *McNeil* should be overruled since the *Harrington* case constitutes a supervening and inconsistent decision of the United States Supreme Court. Cf. *People* v. *Perez*, 299 N.Y. 784, 300 N.Y. 208; *Cohen and Karger, Powers of the New York Court of Appeals, Sec. 786, et seq.*

To demonstrate that the Supreme Court considered appellant's case in relation to the *Harrington* rule and held that the Bruton rule nevertheless applied to his case with full force and effect we annex to this brief as "Appellant's Appendix C" a telegram which the writer had transmitted to that Court following the *Harrington* decision.

The United States Supreme Court had before it appellant's case for more than two long years with a complete trial record, extensive briefs and additional *"Bruton"* styled briefs, To say now that the remand to this Court for further consideration in the light of *Bruton* v. *United States, supra,* is anything but for the purpose of according this Court an opportunity to render a decision in conformity with the true intent of the Supreme Court in this case, *viz.,* that appellant be accorded a new trial under the teachings of the *Bruton* rule would be manifestly illogical.

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*Appendix C*

## POINT II

**With respect to appellant's conviction of manslaughter his statements were totally exculpatory. His co-defendant, Moll, however, not only incriminated himself but Stanbridge as well in his statements. As to his manslaughter conviction appellant is on all fours with the *Bruton* rule.**

Appellant's statements (People's Exhibits 23 and 27 in Evidence) were total disclaimers of any criminal participation in the homicide of Patrolman Coote (see Appellant's Main Brief, Point V, page 37 *et seq.*).

On the other hand, co-defendant Moll's statements not only incriminated himself but he placed Stanbridge in such close proximity to the area of the actual shooting that it tended to connect Stanbridge to the actual homicide (R. 5260-62; People's Exhibit 37 in Evidence). Indeed, it was deemed sufficient to merit the affirmance of his conviction of Manslaughter by this Court.

Appellant Stanbridge, therefore should be considered to be "on all fours" by this Court with the *Bruton* rule since Moll did not testify at trial and thereby foreclosed any inquiry * in regard to the truth of his statements implicating Stanbridge in the actual homicide by placing him in his statements in close proximity to the area of the shooting while Stanbridge had denied any complicity in the

---

* The respondent has argued before the Supreme Court and in his affidavit before this Court that whatever *Bruton* prejudice Stanbridge suffered at trial was somehow cured by the "Post-Trial" *Huntley* hearing. If the respondent somehow finds solace in the seemingly "better than nothing" argument we cannot foreclose him. However, we are sure this Court will understand if we eschew answering this meritless argument.

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homicide of Patrolman Coote. It therefore follows that his conviction of Manslaughter should be reversed since he had been denied the right of confrontation and cross-examination vouchsafed by the *Bruton* rule. Cf. *People* v. *Anthony*, 24 N.Y. 2d 696 (reversing Anthony's co-defendant, Reginald Stephen Batten). Accord—*United States ex rel. Johnson* v. *Yeager*, 399 F.2d 508, 510-511 (3rd Cir. 1968), *cert. denied*, 89 S. Ct. 620.

## POINT III

**Appellant's conviction of robbery in the First Degree should be reversed in the light of *Bruton* v. *United States*, *supra*, since the harmless error rule cannot be applied here inasmuch as appellant's conviction is not predicated upon overwhelming evidence. Instead, the entire evidentiary content of the People's case consists of appellant's suspect confessions.**

In arguing before this Court in *People* v. *McQueen*, 18 N.Y. 2d 337 for a prospective application of *Escobedo* v. *Illinois*, 378 U.S. 478, the respondent had occasion to allude to appellant's case in his brief. He stated there, and quite correctly so, that if *Escobedo* were applied to cases then on appeal, appellant's conviction, in which an appeal was then pending in this Court would result in reversal of his conviction and a dismissal of the indictment since apart from his confessions there was no other probative evidence which the People possessed with which to prosecute Stanbridge.

In successfully arguing last July for the reargument of appellant's appeal in this Court, notwithstanding the chronological set-of-events illustrated herein culminating in the grant of appellant's petition for a writ of certiorari and remand in the light of the *Bruton* case, he stated such re-

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argument would not be a "sham and is not frivolous" (Res. Affd. p. 3). He also asserted that Stanbridge's convictions do not stand exclusively "upon his confessions alone but a *mountain* of circumstantial evidence sufficient to remove any doubt in the Court's mind about the fairness of the trial" (Res. Affd., p. 5). The respondent's "mountain" is in reality a Chimera. At best, respondent's "mountain" can be characterized a "molehill". Of course, there is no other evidence apart from Stanbridge's probably constitutionally defective confessions which explains why *Harrington's* conviction was affirmed and *Stanbridge's* case was remanded following *Harrington* and citing a case where the *defendant's* conviction (*Bruton*) had bbenreversed by that august tribual.

The victims of the robbery, Frank Gagliardi and Raymond Tichelaar, respectively testified that they were certainly incapable of rendering any identification of the robbers (R. 458).

The ultimate disposition of Stanbridge's case, which would be consistent with the intent of the Supreme Court's remand, would be the same result as in the case cited by that Court in remanding appellant's case to this Court (*Bruton* v. *United States, supra*).

In applying the criterion of *Harrington* it is apparent that the harmless error rule has no standing in the case of appellant Stanbridge.

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*Appendix C*

## POINT IV

**The appellant's right to confrontation was violated by virtue of testimony adduced by the People. A joint trial severely prejudiced appellant's substantial rights.**

William Brittain, a life-time friend of co-defendant Moll and a friend of appellant Stanbridge, testified for the People that following the crime, he had spoken with Moll. He noticed that Moll's hand was injured. He testified that Moll had told him that he injured his hand when he shot a cop with a defective shotgun and that Red, William Stanbridge, was with him (R. 926). Brittain had made a statement to the District Attorney shortly after Moll on the date of Moll's arrest. At one point the trial prosecutor was permitted to refresh the witness' recollection by reading from this statement in which Brittain had stated that Moll admitted shooting Patrolman Coote in conjunction with a robbery in which appellant Stanbridge participated (R. 931).

Upon cross-examination by counsel for Moll this witness testified that three weeks prior to the trial of this indictment, counsel for Moll and an associate, Mr. Griffin, along with Walter Moll, the brother of Robert Moll, had interviewed him. Britain testified that he had agreed with a statement made by Mr. Griffin at this interview to the effect that "Red" (Stanbridge) had shot the police officer with a pistol and Walter Moll's statement that Stanbridge had shot Patrolman Coote with a shotgun (R. 968). Counsel for appellant immediately moved for the declaration of a mistrial on the basis of this prejudicial testimony adduced at this joint trial. The motion was denied and an exception duly noted (R. 969).

Ildo Ruiz, who had preceded Brittain as a prosecution witness earlier testified that Moll had come to his home

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argument would not be a "sham and is not frivolous" (Res. Affd. p. 3). He also asserted that Stanbridge's convictions do not stand exclusively "upon his confessions alone but a *mountain* of circumstantial evidence sufficient to remove any doubt in the Court's mind about the fairness of the trial" (Res. Affd., p. 5). The respondent's "mountain" is in reality a Chimera. At best, respondent's "mountain" can be characterized a "molehill". Of course, there is no other evidence apart from Stanbridge's probably constitutionally defective confessions which explains why *Harrington's* conviction was affirmed and *Stanbridge's* case was remanded following *Harrington* and citing a case where the *defendant's* conviction (*Bruton*) had bbenreversed by that august tribual.

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The ultimate disposition of Stanbridge's case, which would be consistent with the intent of the Supreme Court's remand, would be the same result as in the case cited by that Court in remanding appellant's case to this Court (*Bruton* v. *United States, supra*).

In applying the criterion of *Harrington* it is apparent that the harmless error rule has no standing in the case of appellant Stanbridge.

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*Appendix C*

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Ildo Ruiz, who had preceded Brittain as a prosecution witness earlier testified that Moll had come to his home

with his brother Walter and William Brittain the night of the shooting and robbery (R. 822-24).

He was permitted to testify over vigorous objection and motions for a mistrial that Robert Moll had told himthat he had "pulled" a robbery with appellant Stanbridge and John Closter in a supermarket and had shot a cop in effecting an escape (R. 822).

The following then ensued:

> "A. He told me that they were running and the officer said 'Stop', and as they made a turn or something like that, the officer couldn't see the shotgun because he was holding it in front of him and the officer was in back.
>
> Mr. Direnzo: Move that that be stricken, if your Honor pleases.
>
> The Court: *That is all part of the conversation.*
>
> The Witness: Yes.
>
> Q. Go ahead. A. And he said that he turned around and he asked one of the other *two* guys if he should, and somebody said *'yeah'*, one of the other two guys.
>
> Mr. Direnzo: Object to it, if your Honor pleases.
>
> The Court: Just tell us what the conversation was. Go ahead.
>
> Mr. Dienzo: Move that this be stricken, if your Honor pleases.
>
> Mr. Direnzo: Respectfully except" (R. 823-24).

The trial prosecutor, seemingly unsatisfied in "merely" adducing this patently prejudicial testimony as against Stanbridge, questioned Ruiz further as follows and again over the repeated objections of counsel for appellant:

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*Appendix C*

"Q. Mr. Ruiz, did the defendant Robert Moll say anything to you, what weapons *they* had with them?

Mr. Direnzo: Objected to, if your Honor pleases—
The Court: Overruled—excuse me" (R. 828).

Thus, through the testimony of these two prosecution witnesses the People succeeded in adducing hearsay—highly prejudicial testimony against Stanbridge which he could not combat by cross-examining Moll because Moll did not testify at trial * and which could not have been adduced had Stanbridge been separately tried.

This testimony is independent of and indeed in dractic contradiction of much of Stanbridge's exculpatory statements. It cannot be gainsaid, therefore, that Stanbridge's substantial rights were irretrievably prejudiced by the misuse of such constitutionally inadmissible evidence. Apart from the fact that the *Bruton* rule requires reversal of his convictions occasioned by the elicitation of such patently hearsay, highly inflammatory testimony in addition this Court is in the unique position of retrospectively recognizing the prejudice suffered by Stanbridge because he was jointly tried with Moll unseen at the beginning. *People* v. *Boone*, 22 N.Y. 2d 476; *People* v. *Jackson*, 22 N.Y. 2d 446; *People* v. *Cefaro*, 23 N.Y. 2d 283; *People* v. *Baker*, 23 N.Y. 2d 307; *People* v. *Anthony*, 24 N.Y. 2d 696. The elicitation of this highly prejudicial testimony could have easily been excluded. Indeed, counsel for appellant had tried to head it off by requesting a side bar conference just prior to the elicitation of this testimony. When it was adduced he immediately moved for a mistrial.

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*** Perhaps it is this illegal evidence which is the "mountain" of evidence the respondent was alluding to in his affidavit referred to above.**

## APPENDIX C-I

### SUPREME COURT OF THE UNITED STATES

**October Term, 1968.**

### STANBRIDGE *v.* NEW YORK.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK.

**No. 208, Misc. Decided June 16, 1969.**

PER CURIAM.

The motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded for further consideration in light of *Bruton* v. *United States*, 391 U.S. 123.

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## APPENDIX C-II

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 208 Misc.

WILLIAM STANBRIDGE,

*Petitioner,*

*—against—*

THE PEOPLE OF THE STATE OF NEW YORK

**PETITIONER'S REPLY BRIEF TO THE RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI**

*To: The Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States.*

This is the petitioner's reply to the respondent's supplemental brief submitted in response to a letter dated October 15, 1968, from the Office of the Clerk calling upon the respondent for a further response in the light of *Bruton* v. *United States,* 391 U.S. 123.

### POINT I

**The petitioner's case squarely falls within the definitive specifics of *Bruton* v. *United States,* 391 U.S. 123.**

At page 2 of his supplemental brief the respondent endeavors to distinguish the *Bruton* holding from the case at bar upon the premise that: (1) Unlike Stanbridge,

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*Appendix C-II*

*Bruton* did not confess; and (1) Evans (the confessing co-defendant) did not take the stand at trial to give *Bruton* an opportunity to cross-examine.

The respondent admits, as indeed he must, that *none of the defendants testified at the trial which resulted in Stanbridge's conviction.*

It was only after the rights of Stanbridge had been irretrievably endamagaed and his conviction obtained did the defendant testify at a post trial proceeding (*Jackson* v. *Denno*, 378 U.S. 363; *People* v. *Huntley*, 15 N.Y. 2d 72). The issu at such hearing was exclusively devoted to that of the voluntariness of the respective confessions. In all candor, it is quite difficult for the writer to follow the reasoning of the respondent therein. It seems that he is endeavoring to argue that this *Post-Trial proceeding, held after conviction*, whereat the defendants testified concerning the voluntariness of their respective confessions esoterically cured the prejudice of having Moll's and Closter's respective statements, incriminating Stanbridge received as evidence at trial for *jury consideration*. If we are correct in our interpretation of respondent's argument, then it is apparent that the respondent has miscontrued the basic precept of the *Bruton* rule. Prejudice results to the accused in a joint trial when *before the jury* a non-testifying co-defendant's statement is read to the jury incriminating the accused. This results from the fact that the accused is bereft of any effective means of challenging the truth of such hearsay accusations *indelibly imprinted upon the minds of the jurors*. The jury in the case at bar having rendered their verdict based on such tainted evidence, the error cannot be cured. *A new trial* is therefore required. If an error of such Constitutional magnitude could ever be cured in the convenient manner suggested by the respondent herein there would have been no necessity whatsoever for

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the reversal in the *Bruton* case. The post-trial proceeding in this case could not cure the damage which Stanbridge suffered before the jury as it could not in the *Bruton* case. Accordingly, the petition for writ of Certiorari should be granted in accordance with the due process of law.

## POINT I-A

**The co-defendant, Moll's confession in this case was incriminatory of Stanbridge while Stanbridge's statement was exculpatory with respect to the actual homicide of Officer Coote. Therefore, to all intents and purposes Stanbridge is in the position of a non-confessor convicted upon the hearsay incriminatory confession of a co-defendant.**

The respondent ventures forth with the anticipated argument that inasmuch as both Moll and Stanbridge both made confessions the petitioner herein suffered no prejudice (*Chapman* v. *California*, 386 U.S. 18).* This argument must also fall when confronted by a juxtaposition of the respective statements.

The petitioner's statement (fols. 5155-5214; Peo's. Ex. 23 in Ev.) is an unequivocal denial of any intent to murder on Stanbridge's part. On the other hand, Moll's statement clearly demonstrates his *intent* to "kill." Furthermore, Moll and only Moll, incriminates Stanbridge in the actual homicide (fols. 5248, 5260, 5280; Peo's. Ex. 37 in Ev.).

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*It is quite germane to the issue at bar that the harmless error doctrine (*Chapman* v. *California*, 386 U.S. 18), has been held by the United States Court of Appeals for the Third Circuit in *Johnson* v. *Yeager*, (decided August 23, 1968 and reported September 11, 1968, 3 Crim. L. 2481), *to be unable to save convictions based upon cross-implicating confessions.*

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*Appendix C-II*

This argument of the respondent herein could not find juridicial solace even in New York State. See, *People* v. *Cassidy*, 30 A.D. 2d 795 (A.D. 1st Dept. 1968); *People* v. *Shelly Jean Jackson and Wayne Bruton*, 22 N.Y. 2d ..... dec'd, New York Court of Appeals, July 2, 1968, New York Law Journal, 11-6-68, p. 1.

The respondent further alludes in his brief to the Severance concept (Res. Br., p. 4) (Federal Rules of Crim. Pro. Rule 14). It is noteworthy that Moll's incriminating statements could not have been *redacted by the People*, to exclude all prejudicial references to Stanbridge. *People* v. *Boone*, 23 N.Y. 2d 476; *People* v. *Shelly Jean Jackson and Wayne Bruton, supra.*

It is also our submission that this Court is in the unique position of retrospectively determining the impairment of petitioner Stanbridge's Constitutional Rights "unseen at the beginning" by virtue of the unredactability of Moll's statements incriminating Stanbridge and the joint trial of the defendants. *Cf. People* v. *Krugman*, 44 Misc. 2d 48 to 49; *People* v. *Cole*, 27 A.D. 2d 794 *People* v. *La Belle*, 18 N.Y. 2d 405; *People* v. *Burrelle*, 21 N.Y. 2d 265; *People* v. *Cassidy*, 30 A.D. 2d 795; *Bruton* v. *United States*, 391 U.S. 123. 130; *People* v. *Shelly Jean Jackson and Wayne Bruton, supra.*

In the *Cassidy* case *supra*, the defendant had been jointly tried with four others in New York. In reversing the ensuing convictions of all of the defendants, the Appellate Division for the First Judicial Department unanimously held there, consonant with the concept of *Bruton*:

> "The admission into evidence, at the joint trial, or oral and in some cases written extrajudicial statements of each of several defendants tending to in-

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criminate co-defendants violated the rights of said co-defendants and requires a new trial. In the circumstances of this case, the instructions limiting the consideration *by the jury of the incriminating statements could not* reasonably operate to dispel the prejudice to co-defendants resulting from the receipt of such evidence which was hearsay to them. (See, *Bruton* v. *United States*, 391 U.S. 123; *Roberts* v. *Russell*, ..... U.S. .....; *People* v. *Burrelle*, 21 N.Y. 2d 265)." 30 A.D. 2d 795.

Accord—See, *People* v. *Boone*, 23 N.Y. 2d 476 (N.Y. Court of Appeals, July, 1968). The instant case is manifestly "on all fours" with the *Bruton* rule. Accordingly, the petitioner's application for a writ of Certiorari should be granted.

## POINT II

**There is ample justification under traditional standards for this Court to render constitutionally invalid Stanbridge's confession.**

Under the undisputed facts of Stanbridge's case there is a legion of authority to support a finding that Stanbridge's confessions were nothing more than a product of testimonial compulsion (See, Pet.'s Pet. for Certiorari).

Indeed two Judges of the Court below which included the Chief Judge, were constrained to find that Stanbridge's confession to be Constitutionally infirm (See, Petitioner's Ex.-A to his Petition for Certiorari).

The State may be mislead to believe that this Constitutionally defective instrument could be utilized at a

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new trial if this Court were to remand this case solely in the light of *Bruton* v. *United States, supra.*

It is respectfully submitted that the State should be promptly disabused of any such concept. The confession obtained from Stanbridge was undoubtedly procured in a manner inimical to every basic concept and tenet of fair play and decency. It is ripe, indeed overripe, for judicial burial.

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## APPENDIX C-III

### *TELEGRAM*

To: THE HONORABLE CHIEF JUSTICE EARL WARREN AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Re: Stanbridge v. New York
No. 208 Misc., Ooctober Term, 1968.

HONORABLE SIRS:

The Court, last week, by virtue of a 5 to 3 majority and applying the harmless error doctrine of *Chapman* v. *California*, 386 U.S. 18, affirmed the conviction of the petitioner in *Harrington v. California*.

In response to aletter received from the Clerk of the Court, dated October 15, 1968, an additional brief in the light of *Bruton* v. *United States*, 391 U.S. 123 was filed with this Court by the respondent and petitioner, William Stanbridge in this case.

After perusing the *Harrington* opinion I would, in my estimation, be remiss in my duty to my client if I did not point out certain calient facts which we submit favorably distinguishes Stanbridge's case from that of *Harrington*.

In the first instance, Stanbridge's conviction is predicated entirely upon a confession which two Judges of the New York Court of Appeals have held to be constitutionally defective. This evidence constitutes the entire evidentiary content of the State's case as against Stanbridge (see, Court's Charge to the Jury; Appellant's Brief in the Court below, Points 1, 5 and the Conclusion).

In *People* v. *McQueen*, 18 N.Y. 2d 337, the respondent, the same respondent as in the instant case, in arguing before the New York Court of Appeals in that case for a total

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prospective application of the rule enunciated by this Court in *Escobedo* v. *Illinois* and alluding to Stanbridge's appeal then pending before that Court stated in his brief that if that Court were to hold otherwise in the *McQueen* case the conviction in Stanbridge's case would have been reversed and the indictment dismissed because this evidence was the only evidence the State had with which to try Stanbridge.

Thus, unlike *Harrington,* Stanbridge's conviction is patently predicated on the most meager of evidence.

Also, unlike *Harrington,* neither of petitioner's co-defendants—Moll or Closter—testified at trial thereby precluding any cross-examination whatsoever. Moreover, Moll's and Closter's statements incriminating Stanbridge were not redacted. Furthermore, even a cursory reading of Stanbridge's statement is a full denial of any guilt in the actual homicide while on the other hand, Moll fully incriminates himself and also directly incriminates Stanbridge.

We submit that inasmuch as Stanbridge's statement is totally exculpatory in character and Moll's statement is incriminating of himself and Stanbridge as well coupled with the fact that Moll did not testify at trial brings our case more on all fours with *Bruton* v *United States* than

Most respectfully,

THEODORE ROSENBERG

(The foregoing text was sent as a telegram to the Supreme Court of the United States.)

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JOHN F. DAVIS, CL

IN THE

# Supreme Court of the United States

October Term, 1969

No. 1832 Misc.

WILLIAM STANBRIDGE,

*Petitioner,*

*against*

THE PEOPLE OF THE STATE OF NEW YORK,

*Respondent.*

## BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

WILLIAM CAHN
District Attorney, Nassau County
*Attorney for Respondent*
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*of Counsel*

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IN THE

# Supreme Court of the United States

**October Term, 1969**

**No. Misc.**

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WILLIAM STANBRIDGE,

*Petitioner,*

*against*

THE PEOPLE OF THE STATE OF NEW YORK,

*Respondent.*

---

## BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

*To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

The petitioner, William Stanbridge, prays that a writ of certiorari shall issue to review a judgment of the New York State Court of Appeals entered January 8, 1970.

## Opinion Below

The judgment in the New York State Court of Appeals was unanimously affirmed with Chief Judge Fuld and Judge Burke concurring because of an earlier decision in the Court in *People* v. *McNeil* (24 N.Y. 2d 550), which they thought obliged to follow. The opinion is reported officially at 26 N.Y. 2d 1 and is reproduced in the Appendix as Exhibit A for the convenience of the Court.

## Jurisdiction

The jurisdiction of this Court is apparently sought pursuant to 28 U.S.C. § 1257(3), it being argued that petitioner's Fifth, Sixth and Fourteenth Amendment rights to a fair trial, free of a confession of a co-defendant, was denied him by the State of New York.

## Questions Presented

William Stanbridge, together with Robert Moll and John Closter, committed an armed robbery at the Food Fair Shopping Market, Northern Boulevard, Manhasset, stealing at gunpoint a sum of money in excess of $3,000. The robbery took place in the neighborhood of 6:30 the evening of March 22, 1961. While running from the rear of the store through the parking lot to get to their getaway car, defendants were accosted by Patrolman Joseph Coote of the Nassau County Police Department who was shot dead with a sawed-off shotgun by Robert Moll. Following the murder, the defendants got into their car and left the area.

Stanbridge, Closter and Moll were taken into custody at 11 o'clock, March 22, 1961, 3 o'clock and 6 o'clock March 23, 1961, respectively. Moll seriously injured his hand when firing the sawed-off shotgun so he confessed spontaneously. Closter and Stanbridge thereafter confessed and the sawed-off shotgun and the proceeds of the robbery were ultimately recovered.

The police were led to Stanbridge by a 1955 Chevie hot-rod identified at the scene. This Court (395 U.S. 709) vacated the judgment upholding the conviction in the New York State Court of Appeals (21 N.Y. 2d 706) and remanded the case for reargument in light of *Bruton* (391 U.S. 123).

The judgment upon reconsideration was affirmed, the Court concluding each defendant had confessed and each

defendant had testified at a confession hearing before the judge and out of the presence of the jury and was exposed to full and complete cross-examination thereby removing the case from the spirit and rationale of *Bruton* (391 U.S. 123).

Petitioner, though he confessed and had an opportunity at the hearing to cross-examine Closter and Moll, nevertheless contends he is protected by *Bruton,* consequently New York has improperly applied the decision of this Court to his case. The respondent contends to the contrary.

## The Writ Should be Disallowed

There are no compelling reasons for granting the writ because the New York State Court of Appeals did not decide a federal constitutional question heretofore undetermined by this Court.

Moreover, the Court of Appeals has not decided this case in a way probably not in accordance with any prior controlling decision of this Court.

The key issue elevated by the petition relates to the fairness of the trial. Stanbridge contends his rights in this regard were denied him because of the confession of Closter and Moll. An examination of the brief filed by the District Attorney and the record of the trial also filed with this Court in connection with an application for certiorari by a co-defendant (*Moll* v. *New York,* No. 1484, October Term 1967) reveals the following: Stanbridge, with regard to the voluntariness of his own confession, took the stand and testified (H. 55, *et seq.*). He was not cross-examined by Mr. McDonough, the attorney for Moll, or Mr. Schneider, the attorney for Closter (H. 172). The second co-conspirator to testify was Closter (H. 190, *et seq.*), who was cross-examined in behalf of Moll (H. 206-211) and Stanbridge (H. 211-216).

It is beyond question that counsel for Moll and Stanbridge, this petitioner, made Closter their own witness. For the convenience of the Court, we reproduce in the Appendix as Exhibit B the cross-examination of Closter.

The third and final co-conspirator to testify was Robert Moll (H. 301, *et seq.*), who was not cross-examined in behalf of Stanbridge and Closter (H. 397), only by the District Attorney (H. 323-395).

It is undisputed that Stanbridge had a full and complete opportunity to cross-examine Moll and Closter regarding any part of Moll's statement or Closter's confession which Stanbridge disputed. The trial in this regard was fair in all respects. Unlike *Bruton*, we are not dealing with a non-confessing defendant. Unlike *Bruton*, we are not dealing with an accused, robbed of his Sixth Amendment right to cross-examine his accuser.

The New York proceedings were fair (*Harrington* v. *California* [1969] 395 U.S. 250) so the petition should be disallowed.

Respectfully submitted,

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# APPENDIX

## Exhibit A

### (Opinion of New York State Court of Appeals)

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, *v.* ROBERT MOLL and JOHN CLOSTER, Defendants, and WILLIAM STANBRIDGE, Appellant.

Reargued December 11, 1969; decided January 8, 1970.

Crimes—confessions—upon reconsideration following remand from United States Supreme Court, court adheres to affirmance of judgment of conviction of defendant which followed trial at which confessions of codefendants were received, with limiting instructions to jury—all three defendants testified at Huntley hearing and defendant's lawyer had full opportunity to examine codefendants as to their statements—under circumstances, Bruton v. United States (391 U.S. 123) does not require different result.

Defendant, convicted of manslaughter in the first degree, robbery, larceny and assault, confessed his participation in the crimes and two of his accomplices also confessed. At a joint trial, the confessions of each codefendant were received, each only against the one confessing, with limiting instructions to the jury as to the others. The Supreme Court of the United States vacated the judgment of conviction as to defendant and remanded the case "for further consideration in light of *Bruton* v. *United States,* 391 U. S. 123". The decision in the *Bruton* case turned entirely on the absence of confrontation of witnesses required by the Constitution in a criminal trial. However, there was full adversary opportunity for defendant's lawyer to examine these codefendants as to their statements. All three defendants testified at *Huntley* hearing. Counsel for defendant cross-examined one of the codefendants and he had opportunity to cross-examine the other but did not do so.

*Exhibit A*

The availability of a means to test the truth distinguishes this case from the *Bruton* case. Upon reconsideration, the judgment of conviction should be affirmed.

*People* v. *Stanbridge*, 26 A D 2d 654, affirmed.

REARGUMENT of an appeal, by permission of the Chief Judge of the Court of Appeals, from a judgment of the Appellate Division of the Supreme Court in the Second Judicial Department, entered July 5, 1966, which (1) modified, on the law, and, as modified, affirmed a judgment of the Supreme Court (FRANK A. GULOTTA, *J.*) rendered in Nassau County upon a verdict convicting appellant of the crimes of manslaughter in the first degree, robbery in the first degree, grand larceny in the first degree, assault in the first degree (2 counts) and assault in the second degree (2 counts) and (2) affirmed an order of the Supreme Court (FRANK A. GULOTTA, *J.*), entered in Nassau County, which, after a *Huntley* hearing conducted pursuant to a direction by the Appellate Division (22 A D 2d 921), determined that confessions made by defendant were voluntary. The modification consisted of making the sentence imposed for assault in the first degree run concurrently, rather than consecutively, with that imposed for robbery. The Court of Appeals affirmed the judgment of the Appellate Division on December 29, 1967 (21 N Y 2d 706). The United States Supreme Court granted appellant's petition for a writ of certiorari, vacated the judgment of the Court of Appeals and remanded the case "for further consideration in light of *Bruton* v. *United States*, 391 U. S. 123". (See *Stanbridge* v. *New York*, 395 U. S. 709.)

*Frank A. Lopez* and *Theodore Rosenberg* for appellant. I. The decision of the United States Supreme Court on June 16, 1969, granting appellant's petition for a writ of certiorari after that court had directed specific argument as to the applicability of *Bruton* v. *United States*, 391 U. S. 123, the vacatur of the judgment of this court and the remand of appellant's case to this court for further consideration

in the light in *Bruton* v. *United States, supra,* notwithstanding the earlier decision of that court in *Harrington* v. *California,* 395 U. S. 250 (1969), decided two weeks prior to the grant of appellant's petition for a writ of certiorari and nearly two full months after the decision of this court in *People* v. *McNeil,* 24 N Y 2d 550 (decided April 23, 1969), a decision which the Supreme Court undoubtedly considered in deciding appellant's petition amounts to a definitive adjudication from the highest court in our land that appellant is indeed entitled to a new trial in light of *Bruton* v. *United States, supra.* (*United States ex rel. Catanzaro* v. *Mancusi,* 404 F. 2d 296; *Chapman* v. *California,* 386 U. S. 18; *People* v. *Perez,* 299 N. Y 784, 300 N. Y. 208.) II. With respect to appellant's conviction of manslaughter his statements were totally exculpatory. His codefendant, Moll, however, not only incriminated himself but Stanbridge as well in his statements. As to his manslaughter conviction appellant is on all fours with the *Bruton* rule. (*People* v. *Anthony,* 24 N Y 2d 696.) III. Appellant's conviction of robbery in the first degree should be reversed in the light of *Bruton* v. *United States* since the harmless error rule cannot be applied here inasmuch as appellant's conviction is not predicated upon overwhelming evidence. Instead, the entire evidentiary content of the People's case consists of appellant's suspect confessions. (*People* v. *McQueen,* 18 N Y 2d 337; *Escobedo* v. *Illinois,* 378 U. S. 478.) IV. Appellant's right to confrontation was violated by virtue of testimony adduced by the People. A joint trial severely prejudiced appellant's substantial rights. V. The trial prosecutor's use of Moll's confession as evidence of guilt against Stanbridge in summation was violative of the Sixth and Fourteenth Amendments to the United States Constitution.

*William Cahn, District Attorney* (*Henry P. DeVine* of counsel), for respondent. The judgment should be upheld.

*Exhibit A*

(*People* v. *Anthony*, 24 N Y 2d 696; *People* v. *McNeil*, 24 N Y 2d 550; *People* v. *Galloway*, 24 N Y 2d 935; *Harrington* v. *California*, 395 U. S. 250; *United States ex rel. Catanzaro* v. *Mancusi*, 404 F. 2d 296.)

BERGAN, *J.* In the murder of a policeman following close upon the robbery of a store, William Stanbridge, a participant in both crimes, has been convicted of manslaughter in the first degree, a substantially lesser charge than the murder, first degree, on which he was tried. He was also convicted of robbery, larceny and assault charges arising from the store robbery.

Stanbridge confessed his participation in the crimes. He had two accomplices, Robert Moll and John Closter, who also confessed. There was a joint trial in which the confessions of each defendant were received, each only against the one confessing, with adequate limiting instructions to the jury as to the others. This court in 1967 affirmed all three convictions with a dissenting opinion by Judge BURKE in which Chief Judge FULD joined (*People* v. *Moll*, 21 N Y 2d 706).

On June 16, 1969 the Supreme Court of the United States on petition of Stanbridge vacated the judgment of conviction as to him and remanded the case to this court "for further consideration in light of *Bruton* v. *United States*, 391 U. S. 123" (*Stanbridge* v. *New York*, 395 U. S. 709).

The decision in *Bruton* turned entirely on the absence of confrontation of witnesses required by the Constitution in a criminal trial. This absence was noted when a codefendant's confession implicated the complainant and was received in evidence at a joint trial.

In such a situation, the human nature of juries being what it is, the Supreme Court felt the protection of judicial instruction to the jury not to consider what A's confession said about B was an inadequate safeguard.

So the rule of *Delli Paoli* v. *United States* (352 U. S. 232), resting on the supposed protection of careful judicial

instruction, was overruled. The essence of *Bruton* as laid down by Justice BRENNAN is this: "Here the introduction of Evans' confession posed a substantial threat to petitioner's right to confront the witnesses against him, and this is a hazard we cannot ignore. Despite the concededly clear instructions to the jury to disregard Evans' inadmissible hearsay evidence inculpating petitioner, in the context of a joint trial we cannot accept limiting instructions as an adequate substitute for petitioner's constitutional right of cross-examination" (391 U. S., p. 137).

Further consideration of the present case with the *Bruton* doctrine in mind requires this court to see both the extent to which there was an absence of confrontation against Stanbridge when the whole record is looked at; and if the rule of *Bruton* had been violated, whether the other evidence in the case was so strong as to subordinate the effect on Stanbridge of confessions of codefendants to a minor role so as to say the error was harmless within *Harrington* v. *California* (395 U. S. 250 [1969]).

Justice BRENNAN, dissenting in *Harrington*, felt that "the deterrent effect of" *Bruton* and some other cases "will be significantly underminded" by *Harrington* (395 U. S., p. 255). A State court must, however, take the two cases the way they have been laid down and follow them both in good faith and as far as possible.

On confrontation with the confessing codefendants, there was full adversary opportunity for Stanbridge's lawyer to examine these defendants as to the statements made by them involving Stanbridge. All three defendants testified at the *Huntley* hearing; none testified at the trial. Counsel for Stanbridge cross-examined Closter, one of the codefendants; he had opportunity to cross-examine Moll but did not do it.

The complete absence of confrontation found in *Bruton*, therefore, did not exist here; and although there is a difference between the cross-examination afforded at a trial,

absent here because defendants did not testify, and that afforded at the *Huntley* hearing where they did testify, the availability of a means to test truth seems significantly to distinguish this case from *Bruton* where there was no such availability of cross-examination or confrontation.

This court, considering the effect of *Bruton*, has noted the difference in effect where codefendants testify at the trial and are subject to cross-examination (*People* v. *Anthony*, 24 N Y 2d 696). It has applied the same rule where opportunity to cross-examine was afforded at a *Huntley* hearing (*People* v. *Galloway*, 24 N Y 2d 935).

On somewhat different grounds, the court also has not applied the *Bruton* rule where there are multiple confessions of codefendants and the complaining defendant has himself confessed, apparently because this is a safety check on the reliability of the confession or, in any event, minimizes the prejudicial effect of receiving implicating confessions of other defendants. "[I]n a case such as this, the logic of *Bruton* is inapplicable" (*People* v. *McNeil*, 24 N Y 2d 550, 552 [Scileppi, *J.*]). This was in part based on the rationale in *United States ex rel. Catanzaro* v. *Mancusi*, 404 F. 2d 296).

This reasoning suggests somewhat the broader view of *Harrington* which affords ground on which the record in this case should be distinguished from *Bruton*. If Stanbridge's confession be taken into account, the evidence against him is, indeed, as overwhelming as that considered in *Harrington*.

The issue on the validity of that confession is now closed and as a matter of law it must be held a free and voluntary confession properly received against Stanbridge. This, as to Stanbridge, was the main problem debated in this court, as the dissenting opinion demonstrates (21 N Y 2d 706, 709-711).

The Supreme Court did not reopen this issue in remitting to consider the effect of *Bruton* which is quite a differ-

ent question, and so the confession of Stanbridge added to the circumstantial case against him gives strong enough support to the judgment to come within *Harrington*. Indeed the identity of an unusual car owned by Stanbridge, observed at the scene of the crime by a youthful and alert witness, led to the apprehension of all defendants.

Upon reconsideration the judgment should be affirmed.

Judges SCILEPPI, BREITEL, JASEN and GIBSON concur with Judge BERGAN; Chief Judge FULD and Judge BURKE concur in the following memorandum: Although we still subscribe to the view set forth in the dissenting opinion in *People* v. *McNeil* (24 N Y 2d 550)—which would require a reversal here—we are constrained by the majority's decision in that case to vote for affirmance. (See, also, concurring opinion in *People* v. *Galloway*, 24 N Y 2d 935, 936.)

Upon reargument by defendant Stanbridge: Original decision of this court, dated December 29, 1967, affirming the judgment, adhered to.

## Exhibit B

### (Cross-examination of John Peter Closter)

*Cross-examination by Mr. McDonough:*

Q. Mr. Closter, just a couple of questions: Under your direct examination by Mr. Schneider, do you recall saying that sometime during the early morning hours on the 23rd of March while you were in the precinct you did see the defendant Moll? A. Yes, I did, laying on the floor in the corridor.

Q. I want to ask about that. If I heard, you said you thought that was about two hours after dawn or two hours— A. After it became light out, yes.

Q. And you had been there for a considerable period of time then, had you? A. Yes, I had.

Q. Now, when you saw Moll, can you tell me where you were again at that time, if you know, what floor, precinct, what room? A. Yes. It was on the first floor in a room in the back of the police station, to the right—I think it was the last room as you walked down the corridor on the right. The windows, you could see like the police parking lot, the one where they parked the car, I think, when they brought me in. You could see like a parking lot, and I think there was a house or two across on the other side of the parking lot or maybe just one house.

Q. In any event, the room you were in, from the windows in that room you say you could see the parking lot? A. Yes.

Q. Now, then, do I understand that at some point—and this is the time we are speaking about—you say about two hours after it became light—then this was just before one of the detectives opened the window and suggested that you try to get out? A. Yes. It was maybe a half hour or before that he had done that.

Q. But there came a point where he also opened the door, is that what you said, the detective? A. Yes.

*Exhibit B*

Q. And that was—was this just before you say you saw Moll? Do you understand that question? A. Yes. By saying "just before," I mean like maybe a half hour or an hour before.

Q. What I am getting at is this: As I understood your testimony, you did say at some point a detective did open the door, the room you were in? A. Yes, that's right.

Q. Faced out on the corridor, is that right? A. Yes.

Q. And as soon as he did that, did you hear this shuffling noise and the loud talking and what not? A. A while afterwards.

Q. A while afterwards? Well, did the detective leave the door open? A. Yes.

Q. Will you tell me again what you did here? A. At first, you know, I heard footsteps and scuffling. I could see men passing the door. I could hear their voices. They had remained in the corridor. And I heard men to the back part pass the door, too. A lot of men went by the door.

Q. You mean going both ways or just one way? A. No. Some were stopping short of the door, but the first ones that I noticed were the ones that walked all the way past the door and remained on the other side of the corridor.

Q. You said you were in the last room on the right of the corridor? A. Yes, as you were walking down it.

Q. Did these men come from the front toward the back where you were? A. Yes.

Q. Did they pass the door that you were looking out? A. Some of them didn't. Some of them remained behind it.

Q. And could you see where they went after they passed the door? A. No, but you could hear that they didn't leave, because you could hear them scuffling around.

Q. Could you see where they went? A. No, I couldn't see where they went. The opening of the door only covered a certain space that you could see out.

Q. I understand. You said you heard voices. Were they normal tones or were they loud? A. First they were normal but then they were like growling, like.

Q. Growling? A. Yes. You know, like rough.

Q. Could you tell what they were saying? A. No. It was muted, like. There was a lot of them making noise, too. You couldn't pick out any one sentence or anything. You couldn't make heads or tails of it.

Q. Were these men in plain clothes or could you tell— A. Plain clothes.

Q. You saw no uniformed men at that point? A. No, I don't recall any uniformed men.

Q. Again, as I understood, you told Mr. Schneider you saw—you said you first saw a body? A. Yes.

Q. Meaning that you couldn't recognize it, just saw a human? A. First I saw it was a body, but then I realized who it was because I saw his face.

Q. All right. Wait a second. We will get to that. But the first thing you saw was just some human body? A. Yes; human form, yes.

Q. Human form. Was this on the floor? A. Yes.

Q. You could see it from where you were? A. Yes.

Q. Inside this room? A. Yes.

Q. At this time was there a number of other men around? A. Yes.

Q. Then what did you see with respect to this human form, as you call it? A. Well, I could see Robert Moll's face and the way he was dressed, the clothing he had on.

Mr. McDonough: May I have that read back?
The Court: Read it back.
(The answer was read.)

Q. When you first saw him, was he actually down on the floor? A. Yes, down on his side.

Q. On his side? A. The front part of his body, facing the doorway.

Q. Was his face facing towards you? A. Yes.

*Exhibit B*

Q. And this was the point at which you recognized him? A. Yes.

Q. Did you say you recognized his clothing as well? A. I saw how he was dressed.

Q. Did you recognize him, his clothing that you had at some time seen Moll in?

Mr. Direnzo: Objected to.

The Court: Will you read the question?

Mr. McDonough: I will reword it.

The Court: Read the question back.

(The question was read.)

Mr. McDonough: Had he answered the question?

The Court: I shall overrule the objection.

Mr. Direnzo: He withdrew the question, your Honor.

The Court: I see.

Mr. McDonough: May I inquire how the record stands at the moment?

The Court: Would you read back the question and everything that followed.

(The record was read.)

Q. Well, in any event, you did, as you testified twice now already, recognize Moll's face at that point? A. Yes.

Q. What, if anything, did you observe as to what was going on at the time you were looking out the door? A. They were hitting him and kicking him.

Q. Hitting him and kicking him? A. Yes. Some of them were bent down over him, the ones that were hitting him. And one guy was down on one knee, leaning over him, hitting him, and the others were kicking him like in his legs.

Q. Did you recognize any detectives? A. One of them, I did. I don't know his name but I could pick him out.

Q. That's all right. You can't remember his name now? A. No.

Q. Did they actually stop in front of the door there for any period of time at all? A. He was laying on the floor there for about twenty or twenty-five seconds.

Q. And this hitting that you described and kicking was going on during that period? A. Yes.

Q. And then what did you see after the twenty-five seconds? A. They picked him up and took him further down the hall, out of my line of sight.

Q. That is, they took him toward the front of the building? A. Yes.

Q. You were in the last room in the back, you say? A. Yes.

Q. And that was the last thing you saw? A. Yes.

Q. Well, aside from what you saw, the last thing you saw, did you hear anything more? A. You mean down that corridor? I heard noises and feet walking and men's voices.

Mr. McDonough: Excuse me a second, your Honor.

I have no further questions, your Honor.

*Cross-examination by Mr. Direnzo:*

Q. Mr. Closter, how old were you at that time? A. 19.

Q. When were you 19? A. October 11, 1961—1960.

Q. Now, tell me, at any time while you were in the station house, did you hear a window break? Yes or no. A. I heard noise upstairs.

Q. You won't say that you did or did not hear a window break; is that correct, sir? A. It could have been a window —I don't know if it was a window or what.

Mr. Doolittle: Your Honor, that's speculative. I object. That is speculative.

The Court: I will allow it.

What is your answer now?

*Exhibit B*

The Witness: I heard, I will say, glass break. But I don't know if it was a window or what it was.

Q. Tell me, did you hear any shouting or any yelling at any time from anybody? Did you hear any human voice shout or yell while you were in that precinct other than your own voice? A. The detectives were yelling.

Q. Did you hear either the voice of anyone else other than a detective, if you know? A. Not that I could recognize.

Q. Not that you could recognize? A. No.

Q. Would you say it was quiet in that station house or would you say it was very noisy? A. It was quiet sometimes. It was noisy at other times.

Q. Now, there came a time, did there not, when you saw Stanbridge? A. Yes.

Q. Did you see anybody do anything to Stanbridge in your presence? And if so, what was it? A. I saw him get punched on the right side of his face.

Q. Do you know who punched him? A. It was a detective but I don't know which one.

Q. At the time that this detective punched Stanbridge, did Stanbridge do anything to provoke that detective into punching him? A. No, he didn't do anything.

Q. Did he say anything? A. No, he was sitting in a chair.

Q. Who was sitting in a chair. A. Stanbridge.

Q. And he got punched while he was sitting in a chair? A. Yes.

Q. Were you at any time struck in his presence? A. What do you mean by "struck"? You mean "hit"?

Q. Punched or hit. A. I wasn't punched, no.

Mr. Doolittle: I didn't get the answer to that. May I have the answer reread?

The Court: Yes.

(The answer was read.)

*Exhibit B*

Q. Now, when you said you saw the face of Moll, is it your testimony you saw his face while his face was on the ground? A. He was on his side and his face—

Q. Was his face touching the floor, if you know? A. It was several inches above the floor. He was like leaning on his side.

Q. Now, you said they were hitting and kicking him. Describe how he was being hit.

Mr. McDonough: If your Honor please, I don't see how in any way this type of questioning concerns Mr. Direnzo's client. I have covered the matter as far as I think it is necessary from the standpoint of my client, and I shall object to any further questioning at this point.

The Court: Overruled. I am interested, of course, in hearing the testimony concerning all three defendants and all of the occurrences that these men say happened there that day. It may be true that one lawyer may be trespassing upon the province of another, but I can't help that.

Q. You actually saw this happen? You saw him getting hit and kicked while he was on the ground? A. Yes, I did.

Q. Your seeing Moll get hit and getting kicked, did that also frighten you? A. It sure did.

Q. Did that also affect your state of mind at that time? A. Yes.

Q. Did seeing what you saw constitute one of the inducements which prompted you to sign the statement? A. I—

Mr. Schneider: I object to that, your Honor.

Mr. Direnzo: Withdrawn.

Q. Did seeing what you saw induce you to make the answers which you did make to the questions put to you by Mr. Cahn? A. Yes.

*Exhibit B*

The Court: Now, counselor, I want to forewarn you. While I made certain restrictions—

Mr. Direnzo: All right.

The Court: —in connection with this examination—now, wait a minute—you are now getting into a field which is going to compel me to widen those restrictions.

Mr. Direnzo: All right. Now, if your Honor pleases—

The Court: You are going into the question of the veracity of the statement.

Mr. Direnzo: I am not doing that.

The Court: Don't—

Mr. Direnzo: That's exactly what I am not doing.

The Court: Wait just a moment. That's for me to construe.

Mr. Direnzo: All right, your Honor. Recognizing that that's for you to construe, I will now ask your Honor for a point of information.

The Court: I am not giving any information.

Mr. Direnzo: To this extent, I think I am entitled to it. We are here, conducting a hearing under a canopy laid down by the Appellate Division, and to that extent, if your Honor pleases, I feel I can ask your Honor whether, in making the statement he did make, whether there was an inducement of fear on his part. That is the only limited purpose for which I am asking that question.

The Court: I shall give you every protection under the canopy of which you speak. I am telling you that I am forewarning you that you are going into a field which is widening out into the question of the truthfulness of the statement.

Mr. Direnzo: And I say—

The Court: With that warning—

Mr. Direnzo: All right, your Honor.

The Court: With that warning, you may be guided.

Mr. Direnzo: With that warning, I will state this: I have no further questions with that warning, your Honor, because I would rather tread on the side of caution, but I say this to your Honor, that the only purpose I had in asking that question was solely to establish his state of mind, not on the question of veracity of the statement itself—his state of mind when he answered the questions that were put to him, so that this record will be absolutely clear on the purpose of my asking those questions.

I have no further questions.

Mr. McDonough: If your Honor please, may I say that should you see fit, because of any question Mr. Direnzo may have asked this particular witness, the defendant, I would like to state for the record that I do not intend to go into the Q-and-A statement of Mr. Cahn in any way, and I hope that any ruling you might see fit to make subsequently will not apply to my client, Moll.

Mr. Direnzo: I will have the record show that any question I asked this witness, I asked completely on my own, without any suggestion, advice, counsel, aid or assistance from either Mr. McDonough or Mr. Schneider.

Mr. McDonough: I think I made my position clear.

Mr. Direnzo: And I think I made mine clear.

The Court: I am not deaf yet, Mr. Direnzo.

Mr. Direnzo: I beg your pardon?

The Court: I am not yet deaf.

Mr. Direnzo: I am not so sure that my colleagues aren't. It wasn't for your benefit; it's for their benefit.

*Exhibit B*

The Court: Cross-examination?

Mr. Doolittle: Yes, your Honor. Because of some matter brought out in direct examination, may I run down to my office? I tried to grab all the papers myself, but I evidently left some down I intended to use on cross-examination.

The Court: Let's have a five-minute recess.

(A recess was taken.)

Mr. Doolittle: Your Honor, before I proceed I would like to request the Court—I understand Mr. DeVine was permitted Detective Hushion to sit along with him. I have had Detective Daniel Cavanaugh working with me very closely on this case. He has been assigned to help me with this. And I was wondering—he has just come back from some investigation—whether or not he could assist me by sitting here.

The Court: Is that the Detective Cavanaugh mentioned in this?

Mr. Doolittle: Yes, your Honor.

The Court: Your application is denied.

Mr. Doolittle: All right, sir.